

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KEITH DAVIDSON, et al.,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	NO. 95-1506

MEMORANDUM

Reed, J.

June 15, 1998

This Court has before it for consideration the motion of defendant United States of America (“United States”) for partial relief from the Order of the Court of January 14, 1997¹ (Document No. 30), denying partial summary judgment to the defendant and holding that plaintiff Keith Davidson, an uninsured motorist, was not barred from claiming income loss and medical benefits by the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law (“PMVFL”), 75 Pa. Cons. Stat. Ann. § 1701 et seq. (West 1996). The Court hereby determines that the motion will be granted based upon the following analysis.

I. BACKGROUND FACTS AND PROCEEDINGS

On or about November 27, 1991, a United States Postal truck struck the vehicle of

¹ Defendant, in its motion brief, seeks partial relief from the Court’s Order of February 14, 1997. However, that date is incorrect as the Court’s Order of February 14, 1997 granted plaintiff’s motion for reconsideration and reversed a partial grant of summary judgment to the defendants as to noneconomic damages only. Because defendant’s present motion for relief only addresses the issue of economic damages, specifically medical expenses and loss of earnings, the Court’s Order from which the defendant seeks relief is that of January 14, 1997.

plaintiffs as plaintiffs proceeded toward an intersection. At the time of the collision, Davidson operated a Chevrolet Camaro, registered in his name, and Johnson was a passenger therein. Plaintiffs have admitted that the vehicle which Davidson owned and operated was uninsured at the time of the collision. Plaintiffs filed a complaint against the United States seeking relief under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2674, alleging negligent operation of the vehicle owned and operated by the United States Postal Service. Plaintiffs sought to recover damages for medical expenses, loss of earnings, pain and suffering, and property damage to the vehicle. On August 8, 1996, based on the PMVFRL, defendant United States moved for partial summary judgment with respect to the non-property claims² of Davidson, *i.e.*, claims to recover damages for medical expenses, loss of earnings, and pain and suffering. On January 15, 1997, this Court granted the defendant’s motion as to the plaintiffs’ pain and suffering claim but denied the motion as to the plaintiffs’ economic claims.³

Under the FTCA, courts must apply the law of the state in which the accident occurred to determine the liability of the United States for acts of its employees. See 28 U.S.C. § 1346(b). Because the accident occurred in the Commonwealth of Pennsylvania, this Court will apply Pennsylvania law. The PMVFRL, which is the relevant statute, precludes uninsured motorists from recovering “first party benefits.” 75 Pa. Cons. Stat. Ann. § 1714 (West 1996). Section 1702 of the PMVFRL defines first party benefits as “medical benefits, income loss benefits, accidental death benefits and funeral benefits.” 75 Pa. Cons. Stat. Ann. § 1702 (West 1996).

² “Non-property claims” refers to claims seeking to recover damages other than property damage to the vehicle.

³ Plaintiff Davidson subsequently filed a timely motion for reconsideration pursuant to Fed.R.Civ.P 59. On February 14, 1997, this Court granted plaintiff’s motion and reversed the partial grant of summary judgment as to the claim for pain and suffering.

Accordingly, the owner of an uninsured vehicle is barred from recovering first party benefits under any policy even where the operator of the uninsured vehicle is not at fault. See Nationwide Mut. Ins. Co. v. Hampton, 935 F.2d. 578, 589 (3d Cir. 1991) (applying the PMVFRL).

In deciding defendant's earlier motion for summary judgment, this Court had the task of interpreting the phrase "first party benefits." The plaintiff narrowly construed "first party benefits" as referring only to those benefits paid under a contract of insurance to an insured. The United States argued that the term actually means any "economic" benefits, or "out-of-pocket" losses, and thus, section 1714 precludes the recovery of non-property damages in an action at law by an uninsured against a tortfeasor. The defendant failed to cite any cases, PMVFRL provisions, or evidence of legislative intent which supported its proposed definition of "first party benefits." Accordingly, this Court accepted the historical meaning of "first party benefits" (those paid to an insured pursuant to the contract of insurance, see A & E Supply Co. V. Nationwide Mut. Fire Ins. Co., 798 F.2d. 669, 676 n. 8 (4th Cir. 1986)), and denied the United States' motion for summary judgment with respect to the tort claims of Davidson seeking to recover medical expenses and loss of income.

II. ANALYSIS OF THIS MOTION

A. Applicable Rule

The defendant has brought this motion under Federal Rule of Civil Procedure 60(b). Rule 60(b)(6) confers authority on a District Court, "[o]n motion and upon such terms as are just," to relieve a party from a "final judgment, order, or proceeding" for any "reason justifying relief from the operation of the judgment." This Court, however, is unconvinced that Rule 60(b)

is the proper vehicle for this motion. The order denying partial summary judgment does not stand as a final judgment, order, or proceeding (as Rule 60(b) requires), but rather an interlocutory decision. As the advisory committee notes to Rule 60 state, “interlocutory judgments are not brought within the restrictions of the rule, but rather they are left subject to the complete power of the court rendering them to afford such relief from them as justice requires.” However, this Court will look to Rule 60(b)(6) to help guide its decision whether or not to grant relief.⁴ “[U]nder Rule 60(b), the determination to grant or deny relief is within the sound discretion of the court.” Lasky v. Continental Products Corp., 804 F.2d. 250, 256 (3d Cir. 1986).⁵ Rule 60(b)(6) “is a grand reservoir of equitable power to do justice in a particular case.” Martinez-McBean v. Government of the Virgin Islands, 562 F.2d. 908, 911 (3d Cir. 1977) (quoting 7 J. Moore, Federal Practice ¶ 60.27[2], at 375 (2d. ed. 1975)). In considering Rule 60 motions, this Court’s task is “to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done.” Boughner v. Secretary of Health, Education and Welfare, 572 F.2d. 976, 977 (3d Cir.1978).⁶ The Middle District of

⁴ This Court, alternatively, could construe defendant’s motion as a second motion for summary judgment (as this case has not yet gone to trial) in order “to secure the just, speedy, and inexpensive determination of every action.” Fed.R.Civ.P. 1.

⁵ The Court of Appeals for the Third Circuit proceeded to list relevant factors which should guide the District Court in exercising its discretion: “[1] the general desirability that a final judgment should not be lightly disturbed; [2] the procedure provided by Rule 60(b) is not a substitute for an appeal; [3] the Rule should be liberally construed for the purpose of doing substantial justice; [4] whether, although the motion is made within the maximum time, if any, provided by the Rule, the motion is made within a reasonable time;...[5] whether there are any intervening equities which make it inequitable to grant relief; [6] any other factor that is relevant to the justice of the order under attack.” Lasky, 804 F.2d. at 256.

⁶ The Court of Appeals for the Third Circuit has reiterated that a court’s decision whether to grant relief from judgment under Rule 60(b) should take into account the need for finality of judgments. See Stradley v. Cortez, 518 F.2d. 488, 493 (3d Cir. 1975) (where the Court held that, based on the need for finality of judgments, “Rule 60 (b)(6) is available only in cases evidencing extraordinary circumstances”). Here, however, the government does not seek relief from a final judgment, but rather an interlocutory judgment. Thus, the concern over disruptions of final judgments are not implicated here.

Pennsylvania recognized that “[o]ne justification for a Rule 60[b] request for relief is to afford the District Court an opportunity to correct plain errors and avoid...needless delay.” Smith v. Holtz, 879 F.Supp. 435, 439 (M.D. Pa. 1995). Other circuits have stated that supervening clarifications of controlling law by another court can afford sufficient basis for granting a Rule 60(b) motion. See Adams v. Merrill Lynch, 888 F.2d. 696 (10th Cir. 1989); Cox v. Wyrick, 873 F.2d. 200 (8th Cir. 1989); Ritter v. Smith, 811 F.2d. 1398, 1401 (11th Cir.), cert. denied, 483 U.S. 1010 (1987).

B. Analysis of the Merits

On September 2, 1997, the Superior Court of Pennsylvania, in McClung v. Breneman, held that under PMVFRL, uninsured motorists are precluded from recovering medical expenses from alleged third-party tortfeasors where they are ineligible to recover them from insurers. McClung v. Breneman, 700 A.2d. 495, at 498 (Pa. Super. Ct. 1997). The McClung plaintiff, who was injured while she was driving an uninsured registered vehicle, sued the owner of the second vehicle for non-economic damages as well as reimbursement for her medical bills.⁷ In deciding defendant’s motion for summary judgment as to payment of plaintiff’s medical bills, the court attempted to clarify the ambiguities in sections 1714 and 1702 of the PMVFRL. The Superior Court looked to the legislature’s objective in drafting section 1714, and reasoned that allowing an uninsured motorist to recover medical expenses would lead to an unintended result:

The purpose of Section 1714 is to avoid the rewarding of first-party

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The plaintiff in McClung did not sue to recover lost wages.

benefits to motorists who have willingly failed to purchase insurance. The state has a legitimate object in seeing that all motorists are covered by adequate insurance and it is not unreasonable for this Court to deny recovery where motorists have failed to secure such insurance. . . . Allowing uninsured motorists to recover medical expenses from third-party tortfeasors, where they are unable to do so from insurers, would lead to an absurd result and would be contrary to the purpose of the [P]MVFRL.

Id. at 498. The Superior Court also focused on section 1722, which precludes those who are eligible to receive first-party benefits (under an insurance contract) from obtaining a double-recovery from alleged third-party tortfeasors. 75 Pa. C.S.A § 1722. The court found that “it is inconceivable...that the legislature intended to prohibit insured motorists from recovering medical expenses from third-party tortfeasors but intended to permit those who fail to insure to insure themselves to do so.” McClung, 700 A.2d. at 498.

When the highest court of a state has not ruled on an issue of state law, as is the case here, a federal court is required to predict how that court would rule. Commissioner v. Estate of Bosch, 387 U.S. 456, 465 (1967). While the decisions of intermediate courts are but one datum to consider, they are “indicia of how the state’s highest court might decide the issue.” McGowan v. University of Scranton, 759 F.2d. 287, 291 (3d Cir. 1985). They should therefore only be disregarded if the federal court is “convinced by other persuasive data that the highest court of the state would decide otherwise.” West v. A.T.&T. Co., 311 U.S. 223, 237 (1940). The United States suggests that the Pennsylvania Supreme Court would reach the same conclusion that the Superior Court reached in McClung, “because most of the controlling *stare decisis* interpreting the [P]MVFRL are decisions of the Pennsylvania Superior Court.” (Def.’s Mem. at 9). This Court predicts that the Pennsylvania Supreme Court would adopt the McClung decision.

The Superior Court's holding in McClung supports arguments laid out in defendant's earlier motion for partial summary judgment as well as its present motion. The United States argues that limiting first-party benefits to "benefits paid to an insured under an insurance contract . . . would reduce § 1714 to a tautology, because an uninsured motorist, by definition, is not covered under a contract of insurance and cannot recover benefits payable by that contract." (Def.'s Mem. at 5). Moreover, defendant argues, such a definition of section 1714 would do nothing to further the objective of the PMVFRL and would provide no incentive to drivers like Davidson to obey the law and carry insurance coverage. The United States reasons that in order for sections 1714 and 1702 to be consistent with the intent of the PMVFRL, they must be read to preclude an uninsured plaintiff from recovering economic or out-of-pocket expenses from a third-party defendant in an action for damages.

The plaintiff argues that the logic relied upon by the Pennsylvania Superior Court is "highly suspect," because an uninsured vehicle owner with health insurance "will be able to recover first-party benefits, notwithstanding the assumed legislative desire to deny such benefits to the owner. Thus, far from encouraging motorists to be financially responsible, the Court's holding instead denies the payment of medical expenses only to those individuals too poor to afford health insurance." (Pl.'s Mem. at 1). The plaintiff then argues that even if the McClung rationale is followed, (because there is no statutory requirement that vehicle owners purchase wage loss coverage) there can be no preclusion of income loss recovery from a third-party tortfeasor. Plaintiff points to the July 1990 amendments to the PMVFRL which render the purchase of first-party wage loss coverage optional. Finally, plaintiff contends that even if the Court applies the McClung holding to his medical claims, the preclusion of more than \$5,000 of

medical expenses is unwarranted because, under section 1711 of the PMVFRL, a vehicle owner is legislatively required to carry only \$5,000 of first-party medical benefits. Plaintiffs' reasoning is based on his view that "the court in McClung sought only to place an uninsured vehicle owner on the same footing with a minimally financially responsible motorist, preclusion of medical recovery against a third-party beyond the \$5,000.00 minimum would contravene the legislature's intent." (Pl.'s Mem. at 2).

The plaintiff's first argument that the Superior Court's reasoning only effects uninsured vehicle owners without health insurance does not persuade this Court to reach a decision contrary to McClung. Health insurance policies are not referred to in sections 1702 or 1714 of the PMVFRL or mentioned by the court in McClung. Moreover, whether an uninsured motorist with health insurance is barred from collecting health insurance benefits under the PMVFRL was not the issue before the McClung court nor before this Court today. The plaintiffs label the McClung logic as "highly" suspect, but fail to back up their argument with persuasive reasoning, statutory provisions, or case law. Accordingly, this Court accepts the Superior Court's logic over the plaintiffs' first objection.

Plaintiffs' second contention that the PMVFRL can not preclude wage loss recovery or medical benefits in excess of \$5,000 is based upon false assumptions. Plaintiffs correctly point out that section 1711 does not require motorists to insure themselves for income loss or for medical benefits in excess of \$5,000.⁸ However, plaintiffs' conclusion -- that any benefits which

⁸ The relevant language of 75 Pa.C.S.A. § 1711 reads as follows: "(a) Medical benefit - An insurer issuing or delivering liability insurance policies covering any motor vehicle of the type required to be registered under this title...shall include coverage providing a medical benefit in the amount of \$5,000. (b) Minimum policy - All insurers...shall make available for purchase a motor vehicle insurance policy which contains only the minimum requirements of financial responsibility and medical benefits as provided for in this chapter." 75 Pa.C.S.A. § 1711.

vehicle owners are not required to purchase must be recoverable by uninsured motorists -- rests on a misinterpretation of the McClung holding. Plaintiff states: “the court in McClung sought only to place an uninsured vehicle owner on the same footing with a minimally financially responsible motorist.” (Pl.’s Mem. at 2). This assertion is not accurate. The clear language of the McClung opinion reads: “[t]he purpose of section 1714 is to avoid the rewarding of first-party benefits to motorists who have willingly failed to purchase insurance.” McClung 700 A.2d. at 497. Once the Pennsylvania Superior Court decided that the section 1714 “first-party benefits” include damages recoverable in an action against a third-party tortfeasor, one must look no further than section 1702 to understand exactly what type of benefits are non-recoverable. That section of the PMVFRL includes income loss benefits as well as medical benefits.⁹

III. CONCLUSION

Based on the above reasoning, this Court concludes that clarification of the PMVFRL provided by McClung since this Court’s order of Jan. 14, 1997 counsels in favor of relieving the defendant from the denial of summary judgment as McClung makes clear that plaintiff is barred from recovering economic damages such as wage income and medical benefits and the United States is entitled to judgment as a matter of law on these claims. An appropriate Order follows.

⁹ Nowhere in the PMVFRL or in the McClung holding is there mention of a \$5,000 limit on medical benefit preclusion.

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UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	NO. 95-1506

ORDER

AND NOW, this 15th day of June, 1998, upon consideration of the motion of defendant United States of America ("United States") for partial relief from the Order of the Court of January 14, 1997 (Document No. 30), denying partial summary judgment to the defendant, and the reply of plaintiffs Keith Davidson ("Davidson") and Shannon Johnson ("Johnson") (Document No. 31), it is hereby **ORDERED** that the motion is **GRANTED. IT IS FURTHER ORDERED** that **PARTIAL JUDGMENT IS HEREBY ENTERED** in favor of defendant United States of America and against plaintiff Keith Davidson on his claims for income loss and medical benefits.

LOWELL A. REED, JR., J.